

AMENDED IN SENATE JUNE 17, 1997  
AMENDED IN ASSEMBLY APRIL 23, 1997  
AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 721**

**Introduced by Assembly Member Firestone**

February 26, 1997

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An act to amend Sections ~~25100, 25101, 25230, 25532, and 25608~~ 25003, 25100, 25101, 25110, 25120, 25130, 25161, 25164, 25165, 25203, 25216, 25230, 25240, 25241, 25245, 25300, 25532, 25608, 25612.5, and 25619 of, to amend the heading of Chapter 1 (commencing with Section 25100) of Part 2 of, ~~and~~ the heading of Part 2 (commencing with Section 25100), *the heading of Chapter 3 (commencing with Section 25230) of Part 3 of, and the heading of Part 3 (commencing with Section 25200) of, Division 1—of, of Title 4 of, and* to add Sections 25009.5, 25100.1, 25101.1, 25102.1, 25230.1, and 25608.1 to, *and to repeal and add Section 25202 of, the Corporations Code, relating to securities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 721, as amended, Firestone. Securities: federal regulation.

(1) The California Corporate Securities Law of 1968 (hereafter California Securities Law) defines an investment adviser as a person who is compensated for advising other persons as to the value of securities or the advisability of

investing, purchasing or selling securities, or who publishes evaluations of securities. It is *generally* unlawful to act as an investment adviser without obtaining a certificate from the Commissioner of Corporations.

This bill would define an investment adviser representative or associated person of an investment adviser, and would prohibit a person from engaging in certain activities on behalf of the investment adviser unless the investment adviser and that person comply with the commissioner's rules. The bill would also exempt an investment adviser registered under the federal Investment ~~Adviser's~~ *Advisers* Act of 1940, *a person exempt from registration under that act, or a person registered as an investment adviser in another state*, from the requirement of obtaining a certificate from the commissioner *under certain conditions*.

(2) The California Securities Law requires the qualification of a security before it can be offered or sold in an issuer or nonissuer transaction in this state. The federal Capital Markets Efficiency Act of 1996 provides that no law, rule, regulation, or other administrative action of a state requiring qualification of a security may apply to a covered security, as defined by federal law.

Certain classes of securities are exempt from the state qualification requirement, including any security issued by an issuer registered as an open-end management company or unit investment trust, if certain requirements are met. In addition, a security issued by an issuer listed on a national securities exchange not certified by the commissioner, a security issued by an issuer of a security registered or exempt from registration under specified provisions of federal law, or a security registered under the Investment Company Act of 1940, if certain forms are filed with the commissioner, are also exempt.

This bill would delete the above exemptions. The bill would also exempt from qualification a security that is exempt from registration under the federal Securities Act of 1933, a transaction involving a qualified purchaser, and the purchase or sale of a security exempt from registration under specified provisions of federal law, if certain requirements are met,



including filing forms with the commissioner. The bill would impose fees for the filing of these forms.

(3) Existing law authorizes the commissioner to order an issuer to stop offering or selling a security that is subject to qualification and is not qualified.

This bill would additionally authorize the commissioner to order an issuer to stop offering or selling a security that must meet certain requirements in order to be exempt from qualification, if those requirements have not been met.

(4) The bill would also make related and conforming changes.

(5) *The bill would also incorporate additional changes in Section 25100 of the Corporations Code proposed by SB 633, contingent upon prior enactment of that bill.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 25003 of the Corporations Code*  
2 *is amended to read:*

3 25003. (a) “Agent” means any individual, other than  
4 a broker-dealer or a partner of a licensed broker-dealer,  
5 who represents a broker-dealer or who for compensation  
6 represents an issuer in effecting or attempting to effect  
7 purchases or sales of securities in this state. ~~“Agent”~~

8 (b) “Agent” does not include an individual who only  
9 represents an issuer in effecting transactions in securities  
10 exempted by subdivision (a), (b), (e), (f), (g), (j), (k) or  
11 (l) of Section 25100 or in effecting transactions exempted  
12 by Section 25102, and does not include an individual who  
13 has no place of business in this state if he *or she* effects  
14 transactions in this state exclusively with broker-dealers.

15 ~~An~~

16 (c) “Agent” does not include an associated person of  
17 a broker or dealer effecting transactions described in  
18 Section 15(h)(3) of the Securities Exchange Act of 1934,  
19 subject to the provisions of Section 15(h)(2) of that act.

20 (d) An officer or director of a broker-dealer or issuer,  
21 or an individual occupying a similar status or performing

1 similar functions, is an agent only if he otherwise comes  
2 within this definition and receives compensation  
3 specifically related to purchases or sales of securities.

4 *SEC. 2.* Section 25009.5 is added to the Corporations  
5 Code, to read:

6 25009.5. “Investment adviser representative” or  
7 “associated person of an investment adviser” means any  
8 partner, officer, director of (or a person occupying a  
9 similar status or performing similar functions) or other  
10 individual, except clerical or ministerial personnel, who  
11 is employed by or associated with, or subject to the  
12 supervision and control of, an investment adviser that has  
13 obtained a certificate or that is required to obtain a  
14 certificate under this law, or who has a place of business  
15 located in this state and is employed by or associated with,  
16 or subject to the supervision and control of, a person  
17 registered under Section 203 of the Investment Advisers  
18 Act of 1940 or a person excluded from the definition of  
19 “investment adviser” under Section 202(a)(11) of the  
20 Investment Advisers Act of 1940; and who does any of the  
21 following:

22 (a) Makes any recommendations or otherwise renders  
23 advice regarding securities.

24 (b) Manages accounts or portfolios of clients.

25 (c) Determines which recommendation or advice  
26 regarding securities should be given.

27 (d) Solicits, offers, or negotiates for the sale or sells  
28 investment advisory services.

29 (e) Supervises employees who perform any of the  
30 foregoing.

31 ~~SEC. 2.~~

32 *SEC. 3.* The heading of Part 2 (commencing with  
33 Section 25100) of Division 1 of Title 4 of the Corporations  
34 Code is amended to read:

35

36 PART 2. QUALIFICATION OF AND FILING  
37 REQUIREMENTS FOR THE SALE OF SECURITIES

38

39 ~~SEC. 3.~~

1     *SEC. 4.* The heading of Chapter 1 (commencing with  
2     Section 25100) of Part 2 of Division 1 of Title 4 of the  
3     Corporations Code is amended to read:

4  
5           CHAPTER 1.   EXEMPTIONS AND CERTAIN SECURITIES AND  
6           TRANSACTIONS NOT SUBJECT TO QUALIFICATION  
7

8     ~~SEC. 4.~~

9     *SEC. 5.* Section 25100 of the Corporations Code, as  
10    amended by Chapter 1064 of the Statutes of 1996, is  
11    amended to read:

12    25100. The following securities are exempted from  
13    Sections 25110, 25120, and 25130:

14    (a) Any security (including a revenue obligation)  
15    issued or guaranteed by the United States, any state, any  
16    city, county, city and county, public district, public  
17    authority, public corporation, public entity, or political  
18    subdivision of a state or any agency or corporate or other  
19    instrumentality of any one or more of the foregoing; or  
20    any certificate of deposit for any of the foregoing.

21    (b) Any security issued or guaranteed by the  
22    Dominion of Canada, any Canadian province, any  
23    political subdivision or municipality of that province, or  
24    by any other foreign government with which the United  
25    States currently maintains diplomatic relations, if the  
26    security is recognized as a valid obligation by the issuer  
27    or guarantor; or any certificate of deposit for any of the  
28    foregoing.

29    (c) Any security issued or guaranteed by and  
30    representing an interest in or a direct obligation of a  
31    national bank or a bank or trust company incorporated  
32    under the laws of this state, and any security issued by a  
33    bank to one or more other banks and representing an  
34    interest in an asset of the issuing bank.

35    (d) Any security issued or guaranteed by a federal  
36    savings association or federal savings bank or federal land  
37    bank or joint land bank or national farm loan association  
38    or by any savings association, as defined in subdivision (a)  
39    of Section 5102 of the Financial Code, which is subject to

1 the supervision and regulation of the Commissioner of  
2 Financial Institutions of this state.

3 (e) Any security (other than an interest in all or  
4 portions of a parcel or parcels of real property which are  
5 subdivided land or a subdivision or in a real estate  
6 development), the issuance of which is subject to  
7 authorization by the Insurance Commissioner, the Public  
8 Utilities Commission, or the Real Estate Commissioner of  
9 this state.

10 (f) Any security consisting of any interest in all or  
11 portions of a parcel or parcels of real property which are  
12 subdivided lands or a subdivision or in a real estate  
13 development; provided that the exemption in this  
14 subdivision shall not be applicable to any investment  
15 contract sold or offered for sale with, or as part of, any  
16 such interest, or to any person engaged in the business of  
17 selling, distributing, or supplying water for irrigation  
18 purposes or domestic use which is not a public utility.

19 (g) Any mutual capital certificates or savings accounts,  
20 as defined in the Savings Association Law, issued by a  
21 savings association, as defined by subdivision (a) of  
22 Section 5102 of the Financial Code, and holding a license  
23 or certificate of authority then in force from the  
24 Commissioner of Financial Institutions of this state.

25 (h) Any security issued or guaranteed by any federal  
26 credit union, or by any credit union organized and  
27 supervised, or regulated, under the Credit Union Law.

28 (i) Any security issued or guaranteed by any railroad,  
29 other common carrier, public utility, or public utility  
30 holding company which is (1) subject to the jurisdiction  
31 of the Interstate Commerce Commission or (2) a holding  
32 company registered with the Securities and Exchange  
33 Commission under the Public Utility Holding Company  
34 Act of 1935 or a subsidiary of that company within the  
35 meaning of that act or (3) regulated in respect of the  
36 issuance or guarantee of the security by a governmental  
37 authority of the United States, of any state, of Canada or  
38 of any Canadian province; and the security is subject to  
39 registration with or authorization of issuance by that  
40 authority.

1 (j) Any security (except evidences of indebtedness,  
2 whether interest bearing or not) of an issuer (1)  
3 organized exclusively for educational, benevolent,  
4 fraternal, religious, charitable, social, or reformatory  
5 purposes and not for pecuniary profit, if no part of the net  
6 earnings of the issuer inures to the benefit of any private  
7 shareholder or individual, or (2) organized as a chamber  
8 of commerce or trade or professional association. The fact  
9 that amounts received from memberships or dues or both  
10 will or may be used to construct or otherwise acquire  
11 facilities for use by members of the nonprofit  
12 organization does not disqualify the organization for this  
13 exemption. This exemption does not apply to the  
14 securities of any nonprofit organization if any promoter  
15 thereof expects or intends to make a profit directly or  
16 indirectly from any business or activity associated with  
17 the organization or operation of that nonprofit  
18 organization or from remuneration received from that  
19 nonprofit organization.

20 (k) Any agreement, commonly known as a “life  
21 income contract,” of an issuer (1) organized exclusively  
22 for educational, benevolent, fraternal, religious,  
23 charitable, social, or reformatory purposes and not for  
24 pecuniary profit and (2) which the commissioner  
25 designates by rule or order, with a donor in consideration  
26 of a donation of property to that issuer and providing for  
27 the payment to the donor or persons designated by him  
28 or her of income or specified periodic payments from the  
29 donated property or other property for the life of the  
30 donor or those other persons.

31 (l) Any note, draft, bill of exchange, or banker’s  
32 acceptance which is freely transferable and of prime  
33 quality, arises out of a current transaction or the proceeds  
34 of which have been or are to be used for current  
35 transactions, and which evidences an obligation to pay  
36 cash within nine months of the date of issuance, exclusive  
37 of days of grace, or any renewal of that paper which is  
38 likewise limited, or any guarantee of that paper or of any  
39 such renewal, provided that the paper is not offered to  
40 the public in amounts of less than twenty-five thousand

1 dollars (\$25,000) in the aggregate to any one purchaser.  
2 In addition, the commissioner may, by rule or order,  
3 exempt any issuer of any notes, drafts, bills of exchange  
4 or banker's acceptances from qualification of those  
5 securities when the commissioner finds that the  
6 qualification is not necessary or appropriate in the public  
7 interest or for the protection of investors.

8 (m) Any security issued by any corporation organized  
9 and existing under the provisions of Chapter 1  
10 (commencing with Section 54001) of Division 20 of the  
11 Food and Agricultural Code.

12 (n) Any beneficial interest in an employees' pension,  
13 profit-sharing, stock bonus or similar benefit plan which  
14 meets the requirements for qualification under Section  
15 401 of the federal Internal Revenue Code or any statute  
16 amendatory thereof or supplementary thereto. A  
17 determination letter from the Internal Revenue Service  
18 stating that an employees' pension, profit-sharing, stock  
19 bonus or similar benefit plan meets those requirements  
20 shall be conclusive evidence that the plan is an  
21 employees' pension, profit-sharing, stock bonus or similar  
22 plan within the meaning of the first sentence of this  
23 subdivision until the date the determination letter is  
24 revoked in writing by the Internal Revenue Service,  
25 regardless of whether or not the revocation is retroactive.

26 (o) Any security listed or approved for listing upon  
27 notice of issuance on a national securities exchange or  
28 designated or approved for designation upon notice of  
29 issuance as a national market system security on an  
30 interdealer quotation system by the National Association  
31 of Securities Dealers, Inc., if the exchange or interdealer  
32 quotation system has been certified by rule or order of the  
33 commissioner and any warrant or right to purchase or  
34 subscribe to the security. The exemption afforded by this  
35 subdivision does not apply to securities listed or  
36 designated, or approved for listing or designation upon  
37 notice of issuance, in a rollup transaction unless the rollup  
38 transaction is an eligible rollup transaction as defined in  
39 Section 25014.7.





1 That certification of any exchange or system shall be  
2 made by the commissioner upon the written request of  
3 the exchange or system if the commissioner finds that the  
4 exchange or system: (i) in acting on applications for  
5 listing of common stock substantially applies the  
6 minimum standards set forth in either alternative (A) or  
7 (B) of paragraph (1), and (ii) in considering suspension  
8 or removal from listing or designation, substantially  
9 applies each of the criteria set forth in paragraph (2).

10 (1) Listing standards:

11 (A) (i) Shareholders' equity of at least four million  
12 dollars (\$4,000,000).

13 (ii) Pretax income of at least seven hundred fifty  
14 thousand dollars (\$750,000) in the issuer's last fiscal year  
15 or in two of its last three fiscal years.

16 (iii) Minimum public distribution of 500,000 shares  
17 (exclusive of the holdings of officers, directors,  
18 controlling shareholders, and other concentrated or  
19 family holdings), together with a minimum of 800 public  
20 holders or minimum public distribution of 1,000,000  
21 shares together with a minimum of 400 public holders.  
22 The exchange or system may also consider the listing or  
23 designation of a company's securities if the company has  
24 a minimum of 500,000 shares publicly held, a minimum of  
25 400 shareholders and daily trading volume in the issue has  
26 been approximately 2,000 shares or more for the six  
27 months preceding the date of application. In evaluating  
28 the suitability of an issue for listing or designation under  
29 this trading provision, the exchange or system shall  
30 review the nature and frequency of that activity and any  
31 other factors as it may determine to be relevant in  
32 ascertaining whether the issue is suitable for trading. A  
33 security which trades infrequently shall not be  
34 considered for listing or designation under this paragraph  
35 even though average daily volume amounts to 2,000  
36 shares per day or more.

37 Companies whose securities are concentrated in a  
38 limited geographical area, or whose securities are largely  
39 held in block by institutional investors, normally may not

1 be considered eligible for listing or designation unless the  
2 public distribution appreciably exceeds 500,000 shares.

3 (iv) Minimum price of three dollars (\$3) per share for  
4 a reasonable period of time prior to the filing of a listing  
5 or designation application; provided, however, in certain  
6 instances an exchange or system may favorably consider  
7 listing an issue selling for less than three dollars (\$3) per  
8 share after considering all pertinent factors, including  
9 market conditions in general, whether historically the  
10 issue has sold above three dollars (\$3) per share, the  
11 applicant's capitalization, and the number of outstanding  
12 and publicly held shares of the issue.

13 (v) An aggregate market value for publicly held shares  
14 of at least three million dollars (\$3,000,000).

15 (B) (i) Shareholders' equity of at least four million  
16 dollars (\$4,000,000).

17 (ii) Minimum public distribution set forth in clause  
18 (iii) of subparagraph (A) of paragraph (1).

19 (iii) Operating history of at least three years.

20 (iv) An aggregate market value for publicly held  
21 shares of at least fifteen million dollars (\$15,000,000).

22 (2) Criteria for consideration of suspension or removal  
23 from listing:

24 (i) If a company which (A) has shareholders' equity of  
25 less than one million dollars (\$1,000,000) has sustained net  
26 losses in each of its two most recent fiscal years, or (B) has  
27 net tangible assets of less than three million dollars  
28 (\$3,000,000) and has sustained net losses in three of its  
29 four most recent fiscal years.

30 (ii) If the number of shares publicly held (excluding  
31 the holdings of officers, directors, controlling  
32 shareholders and other concentrated or family holdings)  
33 is less than 150,000.

34 (iii) If the total number of shareholders is less than 400  
35 or if the number of shareholders of lots of 100 shares or  
36 more is less than 300.

37 (iv) If the aggregate market value of shares publicly  
38 held is less than seven hundred fifty thousand dollars  
39 (\$750,000).



1 (v) If shares of common stock sell at a price of less than  
2 three dollars (\$3) per share for a substantial period of  
3 time and the issuer shall fail to effectuate a reverse stock  
4 split of the shares within a reasonable period of time after  
5 being requested by the exchange to take that action.

6 A national securities exchange or interdealer quotation  
7 system of the National Association of Securities Dealers,  
8 Inc. certified by rule or order of the commissioner under  
9 this subdivision shall file annual reports when requested  
10 to do so by the commissioner. The annual reports shall  
11 contain, by issuer: the variances granted to an exchange's  
12 listing standards or interdealer quotation system's  
13 designation criteria, including variances from corporate  
14 governance and voting rights' standards, for any security  
15 of that issuer; the reasons for the variances; a discussion  
16 of the review procedure instituted by the exchange or  
17 interdealer quotation system to determine the effect of  
18 the variances on investors and whether the variances  
19 should be continued; and any other information that the  
20 commissioner deems relevant. The purpose of these  
21 reports is to assist the commissioner in determining  
22 whether the quantitative and qualitative requirements of  
23 this subdivision are substantially being met by the  
24 exchange or system in general or with regard to any  
25 particular security.

26 The commissioner after appropriate notice and  
27 opportunity for hearing in accordance with the  
28 provisions of the Administrative Procedure Act, Chapter  
29 5 (commencing with Section 11500) of Part 1 of Division  
30 3 of Title 2 of the Government Code, may, in his or her  
31 discretion, by rule or order, decertify any exchange or  
32 interdealer quotation system previously certified which  
33 ceases substantially to apply the minimum standards or  
34 criteria as set forth in paragraphs (1) and (2).

35 A rule or order of certification shall conclusively  
36 establish that any security listed or approved for listing  
37 upon notice of issuance on any exchange, or designated  
38 or approved for designation upon issuance as a national  
39 market system security on any interdealer quotation  
40 system, named in a rule or order of certification, and any

1 warrant or right to purchase or subscribe to any such  
2 security, is exempt under this subdivision until the  
3 adoption by the commissioner of any rule or order  
4 decertifying the exchange or interdealer quotation  
5 system.

6 (p) A promissory note secured by a lien on real  
7 property, which is neither one of a series of notes of equal  
8 priority secured by interests in the same real property nor  
9 a note in which beneficial interests are sold to more than  
10 one person or entity.

11 (q) Any unincorporated interindemnity or reciprocal  
12 or interinsurance contract, which qualifies under the  
13 provisions of Section 1280.7 of the Insurance Code,  
14 between members of a cooperative corporation,  
15 organized and operating under Part 2 (commencing with  
16 Section 12200) of Division 3 of Title 1, and whose  
17 members consist only of physicians and surgeons licensed  
18 in California, which contracts indemnify solely in respect  
19 to medical malpractice claims against the members, and  
20 which do not collect in advance of loss any moneys other  
21 than contributions by each member to a collective  
22 reserve trust fund or for necessary expenses of  
23 administration.

24 (1) Whenever it appears to the commissioner that any  
25 person has engaged or is about to engage in any act or  
26 practice constituting a violation of any provision of  
27 Section 1280.7 of the Insurance Code, the commissioner  
28 may, in the commissioner's discretion, bring an action in  
29 the name of the people of the State of California in the  
30 superior court to enjoin the acts or practices or to enforce  
31 compliance with Section 1280.7 of the Insurance Code.  
32 Upon a proper showing a permanent or preliminary  
33 injunction, a restraining order, or a writ of mandate shall  
34 be granted and a receiver or conservator may be  
35 appointed for the defendant or the defendant's assets.

36 (2) The commissioner may, in the commissioner's  
37 discretion, (A) make public or private investigations  
38 within or outside of this state as the commissioner deems  
39 necessary to determine whether any person has violated  
40 or is about to violate any provision of Section 1280.7 of the



1 Insurance Code or to aid in the enforcement of Section  
2 1280.7, and (B) publish information concerning the  
3 violation of Section 1280.7.

4 (3) For the purpose of any investigation or proceeding  
5 under this section, the commissioner or any officer  
6 designated by the commissioner may administer oaths  
7 and affirmations, subpoena witnesses, compel their  
8 attendance, take evidence, and require the production of  
9 any books, papers, correspondence, memoranda,  
10 agreements, or other documents or records which the  
11 commissioner deems relevant or material to the inquiry.

12 (4) In case of contumacy by, or refusal to obey a  
13 subpoena issued to, any person, the superior court, upon  
14 application by the commissioner, may issue to the person  
15 an order requiring the person to appear before the  
16 commissioner, or the officer designated by the  
17 commissioner, there to produce documentary evidence,  
18 if so ordered, or to give evidence touching the matter  
19 under investigation or in question. Failure to obey the  
20 order of the court may be punished by the court as a  
21 contempt.

22 (5) No person is excused from attending or testifying  
23 or from producing any document or record before the  
24 commissioner or in obedience to the subpoena of the  
25 commissioner or any officer designated by the  
26 commissioner, or in any proceeding instituted by the  
27 commissioner, on the ground that the testimony or  
28 evidence (documentary or otherwise), required of the  
29 person may tend to incriminate the person or subject the  
30 person to a penalty or forfeiture, but no individual may  
31 be prosecuted or subjected to any penalty or forfeiture for  
32 or on account of any transaction, matter, or thing  
33 concerning which the person is compelled, after validly  
34 claiming the privilege against self-incrimination, to  
35 testify or produce evidence (documentary or otherwise),  
36 except that the individual testifying is not exempt from  
37 prosecution and punishment for perjury or contempt  
38 committed in testifying.

39 (6) The cost of any review, examination, audit, or  
40 investigation made by the commissioner under Section

1 1280.7 of the Insurance Code shall be paid to the  
2 commissioner by the person subject to the review,  
3 examination, audit, or investigation, and the  
4 commissioner may maintain an action for the recovery of  
5 these costs in any court of competent jurisdiction. In  
6 determining the cost, the commissioner may use the  
7 actual amount of the salary or other compensation paid  
8 to the persons making the review, examination, audit, or  
9 investigation plus the actual amount of expenses  
10 including overhead reasonably incurred in the  
11 performance of the work.

12 The recoverable cost of each review, examination,  
13 audit, or investigation made by the commissioner under  
14 Section 1280.7 of the Insurance Code shall not exceed  
15 twenty-five thousand dollars (\$25,000), except that costs  
16 exceeding twenty-five thousand dollars (\$25,000) shall be  
17 recoverable if the costs are necessary to prevent a  
18 violation of any provision of Section 1280.7 of the  
19 Insurance Code.

20 (r) Any shares or memberships issued by any  
21 corporation organized and existing pursuant to the  
22 provisions of Part 2 (commencing with Section 12200) of  
23 Division 3 of Title 1, provided the aggregate investment  
24 of any shareholder or member in shares or memberships  
25 sold pursuant to this subdivision does not exceed three  
26 hundred dollars (\$300). This exemption does not apply to  
27 the shares or memberships of any such corporation if any  
28 promoter thereof expects or intends to make a profit  
29 directly or indirectly from any business or activity  
30 associated with the corporation or the operation of the  
31 corporation or from remuneration, other than reasonable  
32 salary, received from the corporation. This exemption  
33 does not apply to nonvoting shares or memberships of any  
34 such corporation issued to any person who does not  
35 possess, and who will not acquire in connection with the  
36 issuance of nonvoting shares or memberships, voting  
37 power (Section 12253) in the corporation. This  
38 exemption also does not apply to shares or memberships  
39 issued by a nonprofit cooperative corporation organized  
40 to facilitate the creation of an unincorporated

1 interindemnity arrangement that provides  
2 indemnification for medical malpractice to its physician  
3 and surgeon members as set forth in subdivision (q).

4 (s) Any security consisting of or representing an  
5 interest in a pool of mortgage loans which meets each of  
6 the following requirements:

7 (1) The pool consists of whole mortgage loans or  
8 participation interests in those loans, which loans were  
9 originated or acquired in the ordinary course of business  
10 by a national bank or federal savings association or federal  
11 savings bank having its principal office in this state, by a  
12 bank incorporated under the laws of this state or by a  
13 savings association as defined in subdivision (a) of Section  
14 5102 of the Financial Code and which is subject to the  
15 supervision and regulation of the Commissioner of  
16 Financial Institutions, and each of which loans at the time  
17 of transfer to the pool is an authorized investment for  
18 such originating or acquiring institution.

19 (2) The pool of mortgage loans is held in trust by a  
20 trustee which is a financial institution specified in  
21 paragraph (1) as trustee or otherwise.

22 (3) The loans are serviced by a financial institution  
23 specified in paragraph (1).

24 (4) The security is not offered in amounts of less than  
25 twenty-five thousand dollars (\$25,000) in the aggregate to  
26 any one purchaser.

27 (5) The security is offered pursuant to a registration  
28 under the Securities Act of 1933, or pursuant to an  
29 exemption under Regulation A under that act, or in the  
30 opinion of counsel for the issuer, is offered pursuant to an  
31 exemption under Section 4(2) of that act.

32 (t) (1) Any security issued or guaranteed by and  
33 representing an interest in or a direct obligation of an  
34 industrial loan company incorporated under the laws of  
35 the state and authorized by the Commissioner of  
36 Financial Institutions to engage in industrial loan  
37 business.

38 (2) Any investment certificate in or issued by any  
39 industrial loan company that is organized under the laws  
40 of a state of the United States other than this state, that

1 is insured by the Federal Deposit Insurance Corporation,  
2 and that maintains a branch office in this state.

3 ~~SEC. 5.~~

4 *SEC. 5.5. Section 25100 of the Corporations Code, as*  
5 *amended by Chapter 1064 of the Statutes of 1996, is*  
6 *amended to read:*

7 25100. The following securities are exempted from  
8 Sections 25110, 25120, and 25130:

9 (a) Any security (including a revenue obligation)  
10 issued or guaranteed by the United States, any state, any  
11 city, county, city and county, public district, public  
12 authority, public corporation, public entity, or political  
13 subdivision of a state or any agency or corporate or other  
14 instrumentality of any one or more of the foregoing; or  
15 any certificate of deposit for any of the foregoing.

16 (b) Any security issued or guaranteed by ~~the~~  
17 ~~Dominion~~ of Canada, any Canadian province, any  
18 political subdivision or municipality of that province, or  
19 by any other foreign government with which the United  
20 States currently maintains diplomatic relations, if the  
21 security is recognized as a valid obligation by the issuer  
22 or guarantor; or any certificate of deposit for any of the  
23 foregoing.

24 (c) Any security issued or guaranteed by and  
25 representing an interest in or a direct obligation of a  
26 national bank or a bank or trust company incorporated  
27 under the laws of this state, and any security issued by a  
28 bank to one or more other banks and representing an  
29 interest in an asset of the issuing bank.

30 (d) Any security issued or guaranteed by a federal  
31 savings association or federal savings bank or federal land  
32 bank or joint land bank or national farm loan association  
33 or by any savings association, as defined in subdivision (a)  
34 of Section 5102 of the Financial Code, which is subject to  
35 the supervision and regulation of the Commissioner of  
36 Financial Institutions of this state.

37 (e) Any security (other than an interest in all or  
38 portions of a parcel or parcels of real property which are  
39 subdivided land or a subdivision or in a real estate  
40 development), the issuance of which is subject to



1 authorization by the Insurance Commissioner, the Public  
2 Utilities Commission, or the Real Estate Commissioner of  
3 this state.

4 (f) Any security consisting of any interest in all or  
5 portions of a parcel or parcels of real property which are  
6 subdivided lands or a subdivision or in a real estate  
7 development *and any security of a mutual water*  
8 *company issued in connection with subdivided lands*  
9 *pursuant to Chapter 2 (commencing with Section 14310)*  
10 *of Part 7 of Division 3 of Title 1*; provided that the  
11 exemption in this subdivision shall not be applicable to  
12 any investment contract sold or offered for sale with, or  
13 as part of, ~~any such interest, or to any person engaged in~~  
14 ~~the business of selling, distributing, or supplying water for~~  
15 ~~irrigation purposes or domestic use which is not a public~~  
16 ~~utility that interest.~~

17 (g) Any mutual capital certificates or savings accounts,  
18 as defined in the Savings Association Law, issued by a  
19 savings association, as defined by subdivision (a) of  
20 Section 5102 of the Financial Code, and holding a license  
21 or certificate of authority then in force from the  
22 Commissioner of Financial Institutions of this state.

23 (h) Any security issued or guaranteed by any federal  
24 credit union, or by any credit union organized and  
25 supervised, or regulated, under the Credit Union Law.

26 (i) Any security issued or guaranteed by any railroad,  
27 other common carrier, public utility, or public utility  
28 holding company which is (1) subject to the jurisdiction  
29 of the Interstate Commerce Commission *or its successor*  
30 or (2) a holding company registered with the Securities  
31 and Exchange Commission under the Public Utility  
32 Holding Company Act of 1935 or a subsidiary of that  
33 company within the meaning of that act or (3) regulated  
34 in respect of the issuance or guarantee of the security by  
35 a governmental authority of the United States, of any  
36 state, of Canada or of any Canadian province; and the  
37 security is subject to registration with or authorization of  
38 issuance by that authority.

39 (j) Any security (except evidences of indebtedness,  
40 whether interest bearing or not) of an issuer (1)

1 organized exclusively for educational, benevolent,  
2 fraternal, religious, charitable, social, or reformatory  
3 purposes and not for pecuniary profit, if no part of the net  
4 earnings of the issuer inures to the benefit of any private  
5 shareholder or individual, or (2) organized as a chamber  
6 of commerce or trade or professional association. The fact  
7 that amounts received from memberships or dues or both  
8 will or may be used to construct or otherwise acquire  
9 facilities for use by members of the nonprofit  
10 organization does not disqualify the organization for this  
11 exemption. This exemption does not apply to the  
12 securities of any nonprofit organization if any promoter  
13 thereof expects or intends to make a profit directly or  
14 indirectly from any business or activity associated with  
15 the organization or operation of that nonprofit  
16 organization or from remuneration received from that  
17 nonprofit organization.

18 (k) Any agreement, commonly known as a “life  
19 income contract,” of an issuer (1) organized exclusively  
20 for educational, benevolent, fraternal, religious,  
21 charitable, social, or reformatory purposes and not for  
22 pecuniary profit and (2) which the commissioner  
23 designates by rule or order, with a donor in consideration  
24 of a donation of property to that issuer and providing for  
25 the payment to the donor or persons designated by him  
26 or her of income or specified periodic payments from the  
27 donated property or other property for the life of the  
28 donor or those other persons.

29 (l) Any note, draft, bill of exchange, or banker’s  
30 acceptance which is freely transferable and of prime  
31 quality, arises out of a current transaction or the proceeds  
32 of which have been or are to be used for current  
33 transactions, and which evidences an obligation to pay  
34 cash within nine months of the date of issuance, exclusive  
35 of days of grace, or any renewal of that paper which is  
36 likewise limited, or any guarantee of that paper or of ~~any~~  
37 ~~such~~ *that* renewal, provided that the paper is not offered  
38 to the public in amounts of less than twenty-five thousand  
39 dollars (\$25,000) in the aggregate to any one purchaser.  
40 In addition, the commissioner may, by rule or order,

1 exempt any issuer of any notes, drafts, bills of exchange  
2 or banker's acceptances from qualification of those  
3 securities when the commissioner finds that the  
4 qualification is not necessary or appropriate in the public  
5 interest or for the protection of investors.

6 (m) Any security issued by any corporation organized  
7 and existing under the provisions of Chapter 1  
8 (commencing with Section 54001) of Division 20 of the  
9 Food and Agricultural Code.

10 (n) Any beneficial interest in an employees' pension,  
11 profit-sharing, stock bonus or similar benefit plan which  
12 meets the requirements for qualification under Section  
13 401 of the federal Internal Revenue Code or any statute  
14 amendatory thereof or supplementary thereto. A  
15 determination letter from the Internal Revenue Service  
16 stating that an employees' pension, profit-sharing, stock  
17 bonus or similar benefit plan meets those requirements  
18 shall be conclusive evidence that the plan is an  
19 employees' pension, profit-sharing, stock bonus or similar  
20 plan within the meaning of the first sentence of this  
21 subdivision until the date the determination letter is  
22 revoked in writing by the Internal Revenue Service,  
23 regardless of whether or not the revocation is retroactive.

24 (o) Any security listed or approved for listing upon  
25 notice of issuance on a national securities exchange or  
26 designated or approved for designation upon notice of  
27 issuance as a national market system security on an  
28 interdealer quotation system by the National Association  
29 of Securities Dealers, Inc., if the exchange or interdealer  
30 quotation system has been certified by rule or order of the  
31 commissioner and any warrant or right to purchase or  
32 subscribe to the security. The exemption afforded by this  
33 subdivision does not apply to securities listed or  
34 designated, or approved for listing or designation upon  
35 notice of issuance, in a rollup transaction unless the rollup  
36 transaction is an eligible rollup transaction as defined in  
37 Section 25014.7.

38 That certification of any exchange or system shall be  
39 made by the commissioner upon the written request of  
40 the exchange or system if the commissioner finds that the

1 exchange or system: (i) in acting on applications for  
2 listing of common stock substantially applies the  
3 minimum standards set forth in either alternative (A) or  
4 (B) of paragraph (1), and (ii) in considering suspension  
5 or removal from listing or designation, substantially  
6 applies each of the criteria set forth in paragraph (2).

7 (1) Listing standards:

8 (A) (i) Shareholders' equity of at least four million  
9 dollars (\$4,000,000).

10 (ii) Pretax income of at least seven hundred fifty  
11 thousand dollars (\$750,000) in the issuer's last fiscal year  
12 or in two of its last three fiscal years.

13 (iii) Minimum public distribution of 500,000 shares  
14 (exclusive of the holdings of officers, directors,  
15 controlling shareholders, and other concentrated or  
16 family holdings), together with a minimum of 800 public  
17 holders or minimum public distribution of 1,000,000  
18 shares together with a minimum of 400 public holders.  
19 The exchange or system may also consider the listing or  
20 designation of a company's securities if the company has  
21 a minimum of 500,000 shares publicly held, a minimum of  
22 400 shareholders and daily trading volume in the issue has  
23 been approximately 2,000 shares or more for the six  
24 months preceding the date of application. In evaluating  
25 the suitability of an issue for listing or designation under  
26 this trading provision, the exchange or system shall  
27 review the nature and frequency of that activity and any  
28 other factors as it may determine to be relevant in  
29 ascertaining whether the issue is suitable for trading. A  
30 security which trades infrequently shall not be  
31 considered for listing or designation under this paragraph  
32 even though average daily volume amounts to 2,000  
33 shares per day or more.

34 Companies whose securities are concentrated in a  
35 limited geographical area, or whose securities are largely  
36 held in block by institutional investors, normally may not  
37 be considered eligible for listing or designation unless the  
38 public distribution appreciably exceeds 500,000 shares.

39 (iv) Minimum price of three dollars (\$3) per share for  
40 a reasonable period of time prior to the filing of a listing

1 or designation application; provided, however, in certain  
2 instances an exchange or system may favorably consider  
3 listing an issue selling for less than three dollars (\$3) per  
4 share after considering all pertinent factors, including  
5 market conditions in general, whether historically the  
6 issue has sold above three dollars (\$3) per share, the  
7 applicant's capitalization, and the number of outstanding  
8 and publicly held shares of the issue.

9 (v) An aggregate market value for publicly held shares  
10 of at least three million dollars (\$3,000,000).

11 (B) (i) Shareholders' equity of at least four million  
12 dollars (\$4,000,000).

13 (ii) Minimum public distribution set forth in clause  
14 (iii) of subparagraph (A) of paragraph (1).

15 (iii) Operating history of at least three years.

16 (iv) An aggregate market value for publicly held  
17 shares of at least fifteen million dollars (\$15,000,000).

18 (2) Criteria for consideration of suspension or removal  
19 from listing:

20 (i) If a company which (A) has shareholders' equity of  
21 less than one million dollars (\$1,000,000) has sustained net  
22 losses in each of its two most recent fiscal years, or (B) has  
23 net tangible assets of less than three million dollars  
24 (\$3,000,000) and has sustained net losses in three of its  
25 four most recent fiscal years.

26 (ii) If the number of shares publicly held (excluding  
27 the holdings of officers, directors, controlling  
28 shareholders and other concentrated or family holdings)  
29 is less than 150,000.

30 (iii) If the total number of shareholders is less than 400  
31 or if the number of shareholders of lots of 100 shares or  
32 more is less than 300.

33 (iv) If the aggregate market value of shares publicly  
34 held is less than seven hundred fifty thousand dollars  
35 (\$750,000).

36 (v) If shares of common stock sell at a price of less than  
37 three dollars (\$3) per share for a substantial period of  
38 time and the issuer shall fail to effectuate a reverse stock  
39 split of the shares within a reasonable period of time after  
40 being requested by the exchange to take that action.

1 A national securities exchange or interdealer quotation  
2 system of the National Association of Securities Dealers,  
3 Inc. certified by rule or order of the commissioner under  
4 this subdivision shall file annual reports when requested  
5 to do so by the commissioner. The annual reports shall  
6 contain, by issuer: the variances granted to an exchange's  
7 listing standards or interdealer quotation system's  
8 designation criteria, including variances from corporate  
9 governance and voting rights' standards, for any security  
10 of that issuer; the reasons for the variances; a discussion  
11 of the review procedure instituted by the exchange or  
12 interdealer quotation system to determine the effect of  
13 the variances on investors and whether the variances  
14 should be continued; and any other information that the  
15 commissioner deems relevant. The purpose of these  
16 reports is to assist the commissioner in determining  
17 whether the quantitative and qualitative requirements of  
18 this subdivision are substantially being met by the  
19 exchange or system in general or with regard to any  
20 particular security.

21 The commissioner after appropriate notice and  
22 opportunity for hearing in accordance with the  
23 provisions of the Administrative Procedure Act, Chapter  
24 5 (commencing with Section 11500) of Part 1 of Division  
25 3 of Title 2 of the Government Code, may, in his or her  
26 discretion, by rule or order, decertify any exchange or  
27 interdealer quotation system previously certified which  
28 ceases substantially to apply the minimum standards or  
29 criteria as set forth in paragraphs (1) and (2).

30 A rule or order of certification shall conclusively  
31 establish that any security listed or approved for listing  
32 upon notice of issuance on any exchange, or designated  
33 or approved for designation upon issuance as a national  
34 market system security on any interdealer quotation  
35 system, named in a rule or order of certification, and any  
36 warrant or right to purchase or subscribe to ~~any such~~ *that*  
37 security, is exempt under this subdivision until the  
38 adoption by the commissioner of any rule or order  
39 decertifying the exchange or interdealer quotation  
40 system.

1 (p) A promissory note secured by a lien on real  
2 property, which is neither one of a series of notes of equal  
3 priority secured by interests in the same real property nor  
4 a note in which beneficial interests are sold to more than  
5 one person or entity.

6 (q) Any unincorporated interindemnity or reciprocal  
7 or interinsurance contract, which qualifies under the  
8 provisions of Section 1280.7 of the Insurance Code,  
9 between members of a cooperative corporation,  
10 organized and operating under Part 2 (commencing with  
11 Section 12200) of Division 3 of Title 1, and whose  
12 members consist only of physicians and surgeons licensed  
13 in California, which contracts indemnify solely in respect  
14 to medical malpractice claims against the members, and  
15 which do not collect in advance of loss any moneys other  
16 than contributions by each member to a collective  
17 reserve trust fund or for necessary expenses of  
18 administration.

19 (1) Whenever it appears to the commissioner that any  
20 person has engaged or is about to engage in any act or  
21 practice constituting a violation of any provision of  
22 Section 1280.7 of the Insurance Code, the commissioner  
23 may, in the commissioner's discretion, bring an action in  
24 the name of the people of the State of California in the  
25 superior court to enjoin the acts or practices or to enforce  
26 compliance with Section 1280.7 of the Insurance Code.  
27 Upon a proper showing a permanent or preliminary  
28 injunction, *a* restraining order, or *a* writ of mandate shall  
29 be granted and a receiver or conservator may be  
30 appointed for the defendant or the defendant's assets.

31 (2) The commissioner may, in the commissioner's  
32 discretion, (A) make—~~such~~ public or private investigations  
33 within or outside of this state as the commissioner deems  
34 necessary to determine whether any person has violated  
35 or is about to violate any provision of Section 1280.7 of the  
36 Insurance Code or to aid in the enforcement of Section  
37 1280.7, and (B) publish information concerning the  
38 violation of Section 1280.7.

39 (3) For the purpose of any investigation or proceeding  
40 under this section, the commissioner or any officer

1 designated by the commissioner may administer oaths  
2 and affirmations, subpoena witnesses, compel their  
3 attendance, take evidence, and require the production of  
4 any books, papers, correspondence, memoranda,  
5 agreements, or other documents or records which the  
6 commissioner deems relevant or material to the inquiry.

7 (4) In case of contumacy by, or refusal to obey a  
8 subpoena issued to, any person, the superior court, upon  
9 application by the commissioner, may issue to the person  
10 an order requiring the person to appear before the  
11 commissioner, or the officer designated by the  
12 commissioner, there to produce documentary evidence,  
13 if so ordered, or to give evidence touching the matter  
14 under investigation or in question. Failure to obey the  
15 order of the court may be punished by the court as a  
16 contempt.

17 (5) No person is excused from attending or testifying  
18 or from producing any document or record before the  
19 commissioner or in obedience to the subpoena of the  
20 commissioner or any officer designated by the  
21 commissioner, or in any proceeding instituted by the  
22 commissioner, on the ground that the testimony or  
23 evidence (documentary or otherwise), required of the  
24 person may tend to incriminate the person or subject the  
25 person to a penalty or forfeiture, but no individual may  
26 be prosecuted or subjected to any penalty or forfeiture for  
27 or on account of any transaction, matter, or thing  
28 concerning which the person is compelled, after validly  
29 claiming the privilege against self-incrimination, to  
30 testify or produce evidence (documentary or otherwise),  
31 except that the individual testifying is not exempt from  
32 prosecution and punishment for perjury or contempt  
33 committed in testifying.

34 (6) The cost of any review, examination, audit, or  
35 investigation made by the commissioner under Section  
36 1280.7 of the Insurance Code shall be paid to the  
37 commissioner by the person subject to the review,  
38 examination, audit, or investigation, and the  
39 commissioner may maintain an action for the recovery of  
40 these costs in any court of competent jurisdiction. In



1 determining the cost, the commissioner may use the  
2 actual amount of the salary or other compensation paid  
3 to the persons making the review, examination, audit, or  
4 investigation plus the actual amount of expenses  
5 including overhead reasonably incurred in the  
6 performance of the work.

7 The recoverable cost of each review, examination,  
8 audit, or investigation made by the commissioner under  
9 Section 1280.7 of the Insurance Code shall not exceed  
10 twenty-five thousand dollars (\$25,000), except that costs  
11 exceeding twenty-five thousand dollars (\$25,000) shall be  
12 recoverable if the costs are necessary to prevent a  
13 violation of any provision of Section 1280.7 of the  
14 Insurance Code.

15 (r) Any shares or memberships issued by any  
16 corporation organized and existing pursuant to the  
17 provisions of Part 2 (commencing with Section 12200) of  
18 Division 3 of Title 1, provided the aggregate investment  
19 of any shareholder or member in shares or memberships  
20 sold pursuant to this subdivision does not exceed three  
21 hundred dollars (\$300). This exemption does not apply to  
22 the shares or memberships of ~~any such~~ *that* corporation  
23 if any promoter thereof expects or intends to make a  
24 profit directly or indirectly from any business or activity  
25 associated with the corporation or the operation of the  
26 corporation or from remuneration, other than reasonable  
27 salary, received from the corporation. This exemption  
28 does not apply to nonvoting shares or memberships of ~~any~~  
29 ~~such~~ *that* corporation issued to any person who does not  
30 possess, and who will not acquire in connection with the  
31 issuance of nonvoting shares or memberships, voting  
32 power (Section 12253) in the corporation. This  
33 exemption also does not apply to shares or memberships  
34 issued by a nonprofit cooperative corporation organized  
35 to facilitate the creation of an unincorporated  
36 interindemnity arrangement that provides  
37 indemnification for medical malpractice to its physician  
38 and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which ~~loans~~ at the time of transfer to the pool is an authorized investment for ~~such~~ the originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

~~(u) Any security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940, provided that all of the following requirements are met:~~

~~(1) The registration statement for the securities is currently effective under the Securities Act of 1933.~~

~~(2) Prior to any offer or sale in this state of securities claimed to be exempt under this subdivision, there is filed with or paid to the commissioner each of the following:~~

~~(A) A notice of intention to sell that has been executed by the issuer and that includes the name and address of the issuer and the name of the securities to be offered and sold under this subdivision.~~

~~(B) A copy of the current prospectus to be used in the offer and sale of the security.~~

~~(C) The fee provided in subdivision (f) of Section 25608.~~

~~If any offer or sale is made pursuant to this exemption more than 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice of intention to sell, a copy of the prospectus the issuer is currently utilizing for the purpose of making that offer, and the fee specified in subparagraph (C) of paragraph (2).~~

*SEC. 6.* Section 25100.1 is added to the Corporations Code, to read:

25100.1. The following securities are not subject to Sections 25110, 25120, and 25130:

(a) A security defined as a “covered security” pursuant to Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r).

(b) A security issued by an investment company that is registered or that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C. 80a-1) and that is defined as a “covered security” pursuant to Section 18(b)(2) of the Securities Act of 1933, and all the following requirements are met:

(1) Prior to any offer or sale in this state there is filed with or paid to the commissioner each of the following:

1 (A) A notice of intention to sell that has been executed  
2 by the issuer and that includes the name and address of  
3 the issuer and the name of the securities to be offered and  
4 sold, and that a consent to service of process is either on  
5 file with the commissioner or is attached to the notice.

6 ~~(B) A copy of the current prospectus to be used in the~~  
7 ~~offer and sale of the security.~~

8 ~~(C)~~

9 (B) Payment of the notice filing fee provided for in  
10 subdivision (a) of Section 25608.1.

11 (2) If any offer or sale is to be made pursuant to Section  
12 18(b)(2) of the Securities Act of 1933 and this subdivision  
13 more the 12 months after the date the notice was filed  
14 under this subdivision, the issuer shall file another notice  
15 of intention to sell, a copy of the prospectus the issuer is  
16 currently utilizing for the purpose of making that offer,  
17 and pay the fee specified in subparagraph ~~(C)~~ of  
18 ~~paragraph (2)~~ (B) of paragraph (1).

19 ~~SEC. 6.~~

20 SEC. 7. Section 25101 of the Corporations Code is  
21 amended to read:

22 25101. The following securities are exempt from the  
23 provisions of Section 25130:

24 (a) Any security issued by a person that is the issuer of  
25 any security listed on a national securities exchange, or  
26 designated as a national market system security on an  
27 interdealer quotation system by the National Association  
28 of Securities Dealers, Inc., if the exchange or system is  
29 certified by rule or order of the commissioner.

30 (b) The exemption provided by subdivision (a) does  
31 not apply to securities offered pursuant to a registration  
32 under the Securities Act of 1933 or pursuant to the  
33 exemption afforded by Regulation A under that act if the  
34 aggregate offering price of the securities offered  
35 pursuant to that exemption exceeds fifty thousand dollars  
36 (\$50,000).

37 ~~SEC. 7.~~

38 SEC. 8. Section 25101.1 is added to the Corporations  
39 Code, to read:

25101.1. The following securities are not subject to Sections 25110, 25120, and 25130:

(a) A security that is offered or sold in a transaction that is exempt from registration under Section 4(1) of the Securities Act of 1933 (15 U.S.C. 77r) pursuant to Section 18(b)(4)(A) of that act, if the issuer, other than a foreign (other country) issuer described in subdivision (b), of the security files the required reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, (15 U.S.C. 78a et seq.), and all the following requirements are met:

~~(1) An annual notice is filed by the issuer with the~~

*(1) A notice is filed by or on behalf of the issuer with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in any annual or periodic reports that the commissioner by rule or order deems appropriate.*

(2) A consent to service of process under Section 25165 is filed with the notice required in paragraph (1).

(b) A security of a foreign (other country) issuer that avails itself of the exemption from registration under Section 12(g)(3) of the Securities Exchange Act of 1934 is subject to the qualification requirements of Sections 25110, 25120, and 25130, unless the issuer is a reporting company under the Securities Exchange Act of 1934 and files the required reports under Section 13 or 15(d) of that act.

~~SEC. 8.~~

SEC. 9. Section 25102.1 is added to the Corporations Code, to read:

25102.1. The following transactions are not subject to Sections 25110, 25120, and 25130:

(a) Any offer or sale of a security to a “qualified purchaser” as that term is defined by rule of the Securities and Exchange Commission pursuant to Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. 77r), and all the following requirements are met:

(1) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or

1 periodic reports that the commissioner by rule or order  
2 deems appropriate.

3 (2) A consent to service of process under Section 25165  
4 is filed with the notice required by paragraph (1).

5 (3) Payment of a notice filing fee provided for in  
6 subdivision (b) of Section 25608.1.

7 (b) Any offer and sale of a security with respect to a  
8 transaction that is exempt from registration under  
9 Sections 4(3) and 4(4) of the Securities Act of 1933  
10 pursuant to Section 18(b)(4)(A) and (B) of that act.

11 (c) (1) Any offer or sale of a security with respect to  
12 a transaction that is exempt from registration under the  
13 Securities Act of 1933 pursuant to Section 18(b)(4)(C) of  
14 that act, and all the following requirements are met:

15 (A) A notice is filed with the commissioner prior to an  
16 offer in this state, along with any documents filed with the  
17 Securities and Exchange Commission in annual or  
18 periodic reports that the commissioner by rule or order  
19 deems appropriate.

20 (B) A consent to service of process under Section  
21 25165 is filed with the notice required by paragraph (1).

22 (C) Payment of the notice filing fee provided for in  
23 subdivision (c) of Section 25608.1.

24 (2) The requirements of subparagraphs (A), (B), and  
25 (C) of paragraph (1) of this subdivision do not apply to  
26 securities offered and sold to the class of investors or in the  
27 transactions described in subdivisions (d), (g), (i), and  
28 (k) of Section 25102, or to the class of investors or in the  
29 transactions described in subdivisions (c), (d), (e), and  
30 (f) of Section 25104.

31 (d) Any offer or sale of a security with respect to a  
32 transaction that is exempt from registration under the  
33 Securities Act of 1933 pursuant to Section 18(b)(4)(D) of  
34 that act, and all the following requirements are met:

35 (1) A notice in the form of a copy of the completed  
36 Form D (17 C.F.R. 239.500) filed with the Securities and  
37 Exchange Commission is filed with the commissioner  
38 within 15 days of the first sale in this state, along with  
39 documents filed with the Securities and Exchange

Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice as required by paragraph (1).

(3) Payment of the notice filing fee provided for in subdivision (d) of Section 25608.1.

(e) Notwithstanding the language of subdivisions (a), (b), (c), and (d) of this section, an issuer may file an application for qualification pursuant to Sections 25111, 25112, 25113, 25121, 25131, or 25142.

~~SEC. 9.~~

*SEC. 10. Section 25110 of the Corporations Code is amended to read:*

25110. It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted *or not subject to qualification* under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

*SEC. 11. Section 25120 of the Corporations Code is amended to read:*

25120. It is unlawful for any person to offer or sell in this state any security in an issuer transaction in connection with any change in the rights, preferences, privileges, or restrictions of or on outstanding securities or in any exchange of securities by the issuer with its existing security holders exclusively or in any exchange in connection with any merger or consolidation or purchase of assets in consideration wholly or in part of the issuance

1 of securities, unless the security is qualified for sale under  
2 this chapter (and no order under Section 25140 or  
3 subdivision (a) of Section 25143 is in effect with respect  
4 to such qualification) or unless such security or  
5 transaction is exempted *or not subject to qualification*  
6 under Chapter 1 (commencing with Section 25100) of  
7 this part.

8 *SEC. 12. Section 25130 of the Corporations Code is*  
9 *amended to read:*

10 25130. It is unlawful for any person to offer or sell any  
11 security in this state in any nonissuer transaction unless it  
12 is qualified for such sale under this chapter or under  
13 Section 25111 or 25113 of Chapter 2 (commencing with  
14 Section 25110) of this part (and no order under Section  
15 25140 or subdivision (a) of Section 25143 is in effect with  
16 respect to such qualification) or unless such security or  
17 transaction is exempted *or not subject to qualification*  
18 under Chapter 1 (commencing with Section 25100) of  
19 this part.

20 *SEC. 13. Section 25161 of the Corporations Code is*  
21 *amended to read:*

22 25161. Any document filed under this law or a  
23 predecessor statute may be incorporated by reference in  
24 a subsequent application *or notice filing* if it was filed  
25 within four years prior to the filing of the application, or  
26 is otherwise available in the files of the commissioner, to  
27 the extent that the document is currently accurate.

28 *SEC. 14. Section 25164 of the Corporations Code is*  
29 *amended to read:*

30 25164. (a) Neither (1) the fact that an application for  
31 qualification under this law has been filed nor (2) the fact  
32 that such qualification has become effective constitutes a  
33 finding by the commissioner that any document filed  
34 under this law is true, complete, or not misleading.  
35 Neither any such fact nor the fact that *a notice is filed or*  
36 an exemption is available for a security or a transaction  
37 means that the commissioner has passed in any way upon  
38 the merits or qualifications of, or recommended or given  
39 approval to, any person, security or transaction (except  
40 as provided in Section 25142).





(b) It is unlawful to make or cause to be made to any prospective purchaser any representation inconsistent with subdivision (a) of this section.

(c) Every permit issued by the commissioner shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be issued.

*SEC. 15. Section 25165 of the Corporations Code is amended to read:*

25165. Every applicant for qualification of the sale of securities under this law or every person filing an application or a notice under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request for or notice of an exemption from qualification (other than a California corporation or a person licensed as a broker-dealer in this state) shall file with the commissioner, in such form as prescribed by rule, an irrevocable consent appointing the commissioner or his or her successor in office to be the applicant's or person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant or person or the successor, executor or administrator thereof, which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous qualification under this law (or application for a permit under any prior law if the application under this law states that such consent is still effective), or in connection with a notice filing under Section 25100.1, 25101.1, 25102.1, and 25230.1, need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or

1 before the return day of the process, if any, or within such  
2 further time as the court allows.

3 *SEC. 16. The heading of Part 3 (commencing with*  
4 *Section 25200) of Division 1 of Title 4 of the Corporations*  
5 *Code is amended to read:*

6  
7 **PART 3. REGULATION AND NOTICE FILING**  
8 **REQUIREMENTS OF AGENTS, BROKER-DEALERS,**  
9 **INVESTMENT ADVISER REPRESENTATIVES, AND**  
10 **INVESTMENT ADVISERS**

11 *SEC. 17. Section 25202 of the Corporations Code is*  
12 *repealed.*

13 ~~25202. A person registered under the Investment~~  
14 ~~Advisers Act of 1940, who has not previously had any~~  
15 ~~certificate denied or revoked under this law or any~~  
16 ~~predecessor statute, shall be exempted from the~~  
17 ~~provisions of Section 25230 if he has no place of business~~  
18 ~~in this state and (a) his only clients in this state are other~~  
19 ~~investment advisers, broker-dealers, banks, savings and~~  
20 ~~loan associations, trust companies, insurance companies,~~  
21 ~~investment companies registered under the Investment~~  
22 ~~Company Act of 1940, pension or profit-sharing trusts~~  
23 ~~(other than self-employed individual retirement plans),~~  
24 ~~or other institutional investors or governmental agencies~~  
25 ~~or instrumentalities designated by rule of the~~  
26 ~~commissioner, or (b) during any period of 12 consecutive~~  
27 ~~months such person does not direct business~~  
28 ~~communications into this state in any manner to more~~  
29 ~~than five clients (which may be self-employed individual~~  
30 ~~retirement plans) other than those specified in clause (a)~~  
31 ~~above, whether or not such person or any of the persons~~  
32 ~~to whom the communications are directed is then present~~  
33 ~~in this state.~~

34 *SEC. 18. Section 25202 is added to the Corporations*  
35 *Code, to read:*

36 *25202. (a) A person registered, licensed, or qualified*  
37 *(or exempt from registration, licensure, or qualification)*  
38 *as an investment adviser by another state, who has not*  
39 *previously had any certificate denied or revoked under*  
40 *this law or any predecessor statute, shall be exempted*

1 from the provisions of Section 25230 if (1) the investment  
2 adviser does not have a place of business in this state and  
3 (2) during the preceding 12-month period has had fewer  
4 than six clients who are residents of this state.

5 (b) For the purpose of this section only, "client" has  
6 the same meaning as the term "client" is defined by the  
7 Securities and Exchange Commission under the rule  
8 adopted pursuant to Section 222(d) of the Investment  
9 Advisers Act of 1940, as amended. Also, for the purpose of  
10 this section only, "client" does not mean other  
11 investment advisers, broker-dealers, banks, savings and  
12 loan associations, trust companies, insurance companies,  
13 investment companies registered under the Investment  
14 Company Act of 1940, pension and profit-sharing trusts  
15 (other than self-employed individual retirement plans),  
16 or other institutional investors or governmental agencies  
17 or instrumentalities designated by rule or order of the  
18 commissioner.

19 SEC. 19. Section 25203 of the Corporations Code is  
20 amended to read:

21 25203. A person whose only clients are ~~investment~~  
22 ~~companies registered under the Investment Company~~  
23 ~~Act of 1940 or insurance companies or both~~ shall be  
24 exempted from the provisions of Section 25230.

25 SEC. 20. Section 25216 of the Corporations Code is  
26 amended to read:

27 25216. (a) No broker-dealer or agent shall effect any  
28 transaction in, or induce or attempt to induce the  
29 purchase or sale of, any security in this state by means of  
30 any manipulative, deceptive or other fraudulent scheme,  
31 device, or contrivance. The commissioner shall, for the  
32 purposes of this subdivision, by rule define such schemes,  
33 devices or contrivances as are manipulative, deceptive, or  
34 otherwise fraudulent.

35 (b) No broker-dealer or agent shall effect any  
36 transaction in, or induce or attempt to induce the  
37 purchase or sale of, any security in this state in connection  
38 with which such broker-dealer or agent engages in any  
39 fraudulent, deceptive or manipulative act or practice or  
40 makes any fictitious quotation. The commissioner shall,

1 for the purposes of this subdivision, by rule define and  
2 prescribe means reasonably designed to prevent such  
3 acts and practices as are fraudulent, deceptive, or  
4 manipulative and such quotations as are fictitious.

5 (c) No broker-dealer or agent shall effect any  
6 transaction in, or induce or attempt to induce the  
7 purchase or sale of, any security in this state in  
8 contravention of such rules as the commissioner may  
9 prescribe as necessary or appropriate in the public  
10 interest or for the protection of investors to provide  
11 safeguards with respect to the financial responsibility of  
12 broker-dealers. ~~Such—~~*Subject to the limitations of Section*  
13 *15(h) of the Securities Exchange Act of 1934, those* rules  
14 may require a minimum capital for broker-dealers or  
15 prescribe a ratio between net capital and aggregate  
16 indebtedness or both and a fidelity bond.

17 (d) No broker-dealer or agent shall effect or attempt  
18 to effect in this state, in contravention of such rules as the  
19 commissioner may prescribe as necessary or appropriate  
20 in the public interest or for the protection of investors, (1)  
21 any transaction in connection with any security whereby  
22 any party to such transaction acquires any put, call,  
23 straddle, or other option or privilege (A) of buying or  
24 selling the security, (B) on any security, certificate of  
25 deposit, or group or index of securities (including any  
26 interest therein or based on the market value thereof),  
27 (C) entered into on a national securities exchange  
28 relating to foreign currency, or (2) any transaction in  
29 connection with any security with relation to which the  
30 broker-dealer or agent has, directly or indirectly, any  
31 interest in any such put, call, straddle, option, or privilege,  
32 or (3) any transaction in any security for the account of  
33 any person who the broker-dealer or agent has reason to  
34 believe has, and who actually has, directly or indirectly,  
35 any interest in any such put, call, straddle, option, or  
36 privilege with relation to such security.

37 (e) The commissioner may by rule require any issuer  
38 who employs agents in connection with any security or  
39 transaction not exempted by Chapter 1 (commencing  
40 with Section 25100) of Part 2 of this division to post a



1 surety bond in an amount not exceeding ten thousand  
2 dollars (\$10,000), conditioned that the issuer will comply  
3 with the provisions of this law and the rules and orders  
4 issued thereunder. The bond, unless previously canceled,  
5 shall cover for the entire period that the qualification is  
6 in effect. If a deposit in lieu of a bond is made pursuant  
7 to Article 7 (commencing with Section 995.710) of  
8 Chapter 2 of Title 14 of Part 2 of the Code of Civil  
9 Procedure, the deposit may include an appropriate  
10 deposit of securities. No suit may be maintained to  
11 enforce any liability on the bond unless brought within  
12 two years after the contract of sale or other act upon  
13 which the suit is based.

14 *SEC. 21. The heading of Chapter 3 (commencing*  
15 *with Section 25230) of Part 3 of Division 1 of Title 4 of the*  
16 *Corporations Code is amended to read:*

17  
18 CHAPTER 3. LICENSING AND NOTICE FILING  
19 REQUIREMENTS OF INVESTMENT ADVISER REPRESENTATIVES  
20 AND INVESTMENT ADVISERS

21 *SEC. 22. Section 25230 of the Corporations Code is*  
22 *amended to read:*

23 25230. (a) It is unlawful for any investment adviser to  
24 conduct business as an investment adviser in this state  
25 unless the investment adviser has first applied for and  
26 secured from the commissioner a certificate, then in  
27 effect, authorizing the investment adviser to do so or  
28 unless the investment adviser is exempted by the  
29 provisions of Chapter 1 (commencing with Section  
30 25200) of this part or unless the investment adviser is  
31 subject to Section 25230.1.

32 (b) No person, on behalf of an investment adviser that  
33 has obtained a certificate pursuant to Section 25231, may,  
34 in this state: offer or negotiate for the sale of investment  
35 advisory services of the investment adviser; determine  
36 which recommendations shall be made to, make  
37 recommendations to, or manage the accounts of, clients  
38 of the investment adviser; or determine the reports or  
39 analyses concerning securities to be published by the  
40 investment adviser, unless the investment adviser and

1 that person have complied with rules that the  
2 commissioner may adopt for the qualification and  
3 employment of those persons.

4 ~~SEC. 10.~~

5 SEC. 23. Section 25230.1 is added to the Corporations  
6 Code, to read:

7 25230.1. (a) A person that (1) is registered under  
8 Section 203 of the Investment Advisers Act of 1940 as an  
9 investment adviser or (2) is not registered under Section  
10 203 of the Investment Advisers Act of 1940 because the  
11 person is excepted from the definition of an investment  
12 adviser under Section 202(a)(11) of that act, is not subject  
13 to the requirement of obtaining a certificate under  
14 Section 25230, but may not conduct business in this state  
15 unless the person first complies with subdivision (b). An  
16 investment adviser representative that has a place of  
17 business in this state—*is may be* required to obtain a  
18 certificate pursuant to Section 25231.

19 (b) A person subject to subdivision (a) shall:

20 (1) File with the commissioner an annual notice, along  
21 with documents filed with the Securities and Exchange  
22 Commission pursuant to the securities laws that the  
23 commissioner by rule or order deems appropriate, and a  
24 consent to service of process under Section 25240.

25 (2) Pay the notice filing fee provided for in subdivision  
26 (e) of Section 25608.1.

27 (c) No investment adviser representative, on behalf of  
28 an investment adviser subject to subdivision (a) may, in  
29 this state: offer or negotiate for the sale of investment  
30 advisory services of the investment adviser; determine  
31 which recommendations shall be made to, make  
32 recommendations to, or manage the accounts of, clients  
33 of the investment adviser; or determine the reports or  
34 analysis concerning securities to be published by the  
35 investment adviser, unless the investment adviser  
36 representative has complied with rules that the  
37 commissioner may adopt for the qualification and  
38 employment of investment adviser representatives.

39 (d) Subdivision (a) does not prohibit the  
40 commissioner from investigating and bringing

1 enforcement actions with respect to fraud or deceit,  
2 including and without limitation, fraud or deceit under  
3 ~~Sections 25235 and 25238~~ *Section 25235* and the rules of  
4 the commissioner adopted thereunder, against an  
5 investment adviser or an investment adviser  
6 representative.

7 ~~SEC. 11.~~

8 *SEC. 24. Section 25240 of the Corporations Code is*  
9 *amended to read:*

10 25240. Every applicant for a certificate as a  
11 broker-dealer or an investment adviser (other than a  
12 California corporation), *and every investment adviser*  
13 *subject to Section 25230.1*, shall file with the  
14 commissioner, in such form as the commissioner by rule  
15 prescribes, an irrevocable consent appointing the  
16 commissioner or the commissioner's successor in office to  
17 be the person's attorney to receive service of any lawful  
18 process in any noncriminal suit, action or proceeding  
19 against the person or the person's successor, executor, or  
20 administrator, which arises under this law or any rule or  
21 order hereunder after the consent has been filed, with the  
22 same force and validity as if served personally on the  
23 person filing the consent. A person who has filed such a  
24 consent in connection with a previous application under  
25 this law (or under any prior law if the application states  
26 that such consent is still effective), *or a person who has*  
27 *filed such a consent in connection with a previous notice*  
28 *filed under Section 25230.1*, need not file another. Service  
29 may be made by leaving a copy of the process in the office  
30 of the commissioner, but it is not effective unless (1) the  
31 plaintiff, who may be the commissioner in a suit, action  
32 or proceeding instituted by the commissioner, forthwith  
33 sends notice of the service and a copy of the process by  
34 registered or certified mail to the defendant or  
35 respondent at the person's last address on file with the  
36 commissioner, and (2) the plaintiff's affidavit of  
37 compliance with this section is filed in the case on or  
38 before the return day of the process, if any, or within such  
39 further time as the court allows.

1 SEC. 25. Section 25241 of the Corporations Code is  
2 amended to read:

3 25241. Every broker-dealer and every investment  
4 adviser shall make and keep such accounts,  
5 correspondence, memoranda, papers, books, and other  
6 records and shall file such financial and other reports as  
7 the commissioner by rule requires, *subject to the*  
8 *limitations of Section 15(h) of the Securities Exchange*  
9 *Act of 1934 with respect to broker-dealers and Section*  
10 *222(c) of the Investment Advisers Act of 1940 with*  
11 *respect to investment advisers.* All records so required  
12 shall be preserved for the time specified in the rule. All  
13 records referred to in this section are subject at any time  
14 and from time to time to such reasonable periodic,  
15 special, or other examinations by the commissioner,  
16 within or without this state, as the commissioner deems  
17 necessary or appropriate in the public interest or for the  
18 protection of investors. For the purpose of avoiding  
19 unnecessary duplications of examinations, the  
20 commissioner, insofar as he *or she* deems it practicable in  
21 administering this section, may cooperate with the  
22 securities administrators of other states, the Securities  
23 and Exchange Commission and any national securities  
24 exchange or national securities association.

25 Upon request of the commissioner, every  
26 broker-dealer or investment adviser shall furnish an  
27 authorization for disclosure to the commissioner of  
28 financial records of the licensee's broker-dealer or  
29 investment adviser business pursuant to Section 7473 of  
30 the Government Code.

31 SEC. 26. Section 25245 of the Corporations Code is  
32 amended to read:

33 25245. It is unlawful for any person willfully to make  
34 any untrue statement of a material fact in any application,  
35 *notice*, or report filed with the commissioner under this  
36 part, or willfully to omit to state in any such application,  
37 *notice*, or report any material fact which is required to be  
38 stated therein.

39 SEC. 27. Section 25300 of the Corporations Code is  
40 amended to read:





1 25300. (a) No person shall publish any advertisement  
2 in this state concerning any security sold or offered for  
3 sale in this state unless a true copy of the advertisement  
4 has first been filed in the office of the commissioner at  
5 least three business days prior to the publication or such  
6 shorter period as the commissioner may by rule or order  
7 allow.

8 (b) Subdivision (a) of this section does not apply to:

9 (1) Any advertisement for any security published by  
10 a licensed broker-dealer if he *or she* is not effecting  
11 transactions in such security as an underwriter or other  
12 participant in a distribution for the issuer;

13 (2) Any advertisement for any security published by  
14 an issuer or any underwriter or other participant in a  
15 distribution for the issuer if the security or transaction is  
16 exempted by the provisions of Chapter 1 (commencing  
17 with Section 25100) of Part 2 of this division;

18 (3) Any advertisement for any security in a nonissuer  
19 transaction if the security is exempted by Section 25100  
20 or an offer of the security is exempted by subdivision (g)  
21 of Section 25104;

22 (4) Any advertisement permitted or required by  
23 Section 5(b)(2) or Section 2(10)(b) of the Securities Act  
24 of 1933 with respect to a security which has been  
25 registered under the Securities Act of 1933 and qualified  
26 for sale in this state;~~or~~

27 (5) *Any advertisement with respect to (A) a security*  
28 *subject to Sections 25100.1 and 25101.1 that is permitted*  
29 *or required under the Securities Act of 1933, (B) a*  
30 *transaction subject to Section 25102.1 that is permitted or*  
31 *required under the Securities Act of 1933, or (C) an*  
32 *investment adviser subject to Section 25230.1 that is*  
33 *permitted or required under the Investment Adviser Act*  
34 *of 1940; or*

35 (6) Any other advertisement exempted by rule of the  
36 commissioner.

37 SEC. 28. Section 25532 of the Corporations Code is  
38 amended to read:

39 25532. (a) If, in the opinion of the commissioner, (1)  
40 the sale of a security is subject to qualification under this

1 law and it is being or has been offered or sold without first  
2 being qualified, the commissioner may order the issuer or  
3 offeror of the security to desist and refrain from the  
4 further offer or sale of the security until qualification has  
5 been made under this law or (2) the sale of a security is  
6 subject to the requirements of Section 25100.1, 25101.1, or  
7 25102.1 and the security is being or has been offered or  
8 sold without first meeting the requirements of those  
9 sections, the commissioner may order the issuer or offerer  
10 of that security to desist and refrain from the further offer  
11 or sale of the security until those requirements have been  
12 met.

13 (b) If, in the opinion of the commissioner, a person is  
14 acting as a broker-dealer or investment adviser, or  
15 engaging in broker-dealer or investment adviser  
16 activities, in violation of Section 25210, 25230 or 25230.1,  
17 the commissioner may order that person to desist and  
18 refrain from the activity until the person has been  
19 appropriately licensed or the required filing has been  
20 made under this law.

21 (c) If, in the opinion of the commissioner, a person has  
22 violated or is violating Section 25401, the commissioner  
23 may order that person to desist and refrain from the  
24 violation.

25 (d) If, after an order has been made under subdivision  
26 (a), (b), or (c), a request for hearing is filed in writing  
27 within one year of the date of service of the order by the  
28 person to whom the order was directed, a hearing shall be  
29 held in accordance with provisions of the Administrative  
30 Procedure Act, Chapter 5 (commencing with Section  
31 11500) of Part 1 of Division 3 of Title 2 of the Government  
32 Code, and the commissioner shall have all of the powers  
33 granted under that chapter. Unless the hearing is  
34 commenced within 15 business days after the request is  
35 filed (or the person affected consents to a later date), the  
36 order is rescinded.

37 If that person fails to file a written request for a hearing  
38 within one year from the date of service of the order, the  
39 order shall be deemed a final order of the commissioner



1 and is not subject to review by any court or agency,  
2 notwithstanding Section 25609.

3 ~~SEC. 12.~~

4 *SEC. 29.* Section 25608 of the Corporations Code is  
5 amended to read:

6 25608. (a) The commissioner shall charge and collect  
7 ~~the fees fixed in this section. All fees charged and~~  
8 ~~collected under this section shall be transmitted to the~~ *the*  
9 *fees fixed in this section and Section 25608.1. All fees*  
10 *charged and collected under this section and Section*  
11 *25608.1 shall be transmitted to the* Treasurer at least  
12 weekly, accompanied by a detailed statement thereof  
13 and shall be credited to the State Corporations Fund.

14 (b) The fee for filing an application for a negotiating  
15 permit under subdivision (c) of Section 25102 is fifty  
16 dollars (\$50).

17 (c) The fee for filing a notice pursuant to paragraph  
18 (5) of subdivision (h) of Section 25102 and the fee for  
19 filing a notice pursuant to paragraph (4) of subdivision (f)  
20 of Section 25102, in addition to the fee prescribed in those  
21 paragraphs, if applicable, shall be determined based on  
22 the value of the securities proposed to be sold in the  
23 transaction for which the notice is filed and in accordance  
24 with subdivision (g), and shall be as follows:

26 Value of Securities	
27 Proposed to be Sold	Filing Fee
28 \$25,000 or less	\$ 25
29 \$25,001 to \$100,000	\$ 35
30 \$100,001 to \$500,000	\$ 50
31 \$500,001 to \$1,000,000	\$150
32 Over \$1,000,000	\$300

33  
34 (d) The fee for filing an application for designation of  
35 an issuer pursuant to subdivision (k) of Section 25100 is  
36 fifty dollars (\$50).

37 (e) The fee for filing an application for qualification of  
38 the sale of securities by notification under Section 25112  
39 or by permit under paragraph (1) of subdivision (b) of  
40 Section 25113 (except applications for qualification by

1 permit of the sale of any guarantee of any security, the  
2 fees for which applications are fixed in subdivision (k))  
3 is two hundred dollars (\$200) plus one-fifth of 1 percent  
4 of the aggregate value of the securities sought to be sold  
5 in this state up to a maximum aggregate fee of two  
6 thousand five hundred dollars (\$2,500).

7 The fee for filing a small company application for  
8 qualification of the sale of securities by permit under  
9 paragraph (2) of subdivision (b) of Section 25113 is two  
10 thousand five hundred dollars (\$2,500). In the case where  
11 the costs of processing a small company application  
12 exceed the filing fee, an additional fee shall be charged,  
13 not to exceed one thousand dollars (\$1,000), over and  
14 above the filing fee based on the costs of the salary or  
15 other compensation paid to persons processing the  
16 application plus overhead costs reasonably incurred in  
17 the performance of the work. In determining the costs,  
18 the commissioner may use the estimated average hourly  
19 cost for all persons processing applications for the fiscal  
20 year.

21 (f) The fee for filing an application for qualification of  
22 the sale of securities by coordination under Section 25111  
23 or a notice of intention to sell under subdivision (t) of  
24 Section 25100 is two hundred dollars (\$200) plus one-fifth  
25 of 1 percent of the aggregate value of the securities  
26 sought to be sold in this state up to a maximum aggregate  
27 fee of two thousand five hundred dollars (\$2,500).

28 (g) For the purpose of determining the fees fixed in  
29 subdivisions (e) and (f):

30 (1) The value of the securities shall be the price at  
31 which the company proposes to sell the securities, or the  
32 value, as alleged in the application, or the actual value, as  
33 determined by the commissioner, of the consideration (if  
34 other than money) to be received in exchange therefor,  
35 or of the securities when sold, whichever is greater.

36 (2) Interim or voting trust certificates shall have a  
37 value equal to the aggregate value of the securities to be  
38 represented by the interim or voting trust certificates.

39 (3) The value of a warrant or right to purchase or  
40 subscribe to another security of the same or another issuer

1 shall be an amount equal to the consideration to be paid  
2 for that warrant or right plus an amount equal to the  
3 consideration to be paid upon purchase of the additional  
4 securities, provided that if the latter amount is not  
5 determinable at the time of qualification, that amount  
6 shall then be the value of the additional securities as  
7 determined by the commissioner.

8 (4) In the case of a share dividend where the  
9 shareholders are given an option to accept either cash or  
10 additional shares of common stock, the value of the  
11 securities to be sold shall be the maximum amount of cash  
12 that would be payable in the event that all shareholders  
13 elected to accept cash.

14 (h) The fee for filing an application for qualification of  
15 the sale of securities by permit under Section 25121 is:

16 (1) Two hundred dollars (\$200) in connection with  
17 any change (including any stock split or reverse stock  
18 split or stock dividend, except a stock dividend where the  
19 shareholders are given an option to accept either cash or  
20 additional shares of common stock) in the rights,  
21 preferences, privileges, or restrictions of or on  
22 outstanding securities.

23 (2) Two hundred dollars (\$200) plus one-fifth of 1  
24 percent of the value, as alleged in the application, or the  
25 actual value, as determined by the commissioner, of the  
26 consideration to be received in exchange therefor, up to  
27 a maximum aggregate fee of two thousand five hundred  
28 dollars (\$2,500), in any exchange of securities by the  
29 issuer with its existing security holders exclusively, or in  
30 any exchange in connection with any merger or  
31 consolidation or purchase of corporate assets in  
32 consideration of the issuance of securities.

33 (i) The fee for filing an application for qualification of  
34 the sale of securities by notification under Section 25131  
35 shall be one hundred dollars (\$100).

36 (j) The fee for an application for the removal of any  
37 condition under Section 25141 is fifty dollars (\$50).

38 (k) The fee for filing any application for a permit to  
39 execute or issue any guarantee of any security is fifty  
40 dollars (\$50).

1 (l) The fee for acting as escrow holder for securities  
2 under Section 25149 is fifty dollars (\$50). In addition, a fee  
3 of two dollars and fifty cents (\$2.50) shall be paid for the  
4 deposit with the commissioner of each new certificate or  
5 other document resulting from a transfer in escrow.

6 (m) The fee for filing an application for an order (1)  
7 consenting to the transfer in escrow of securities or (2)  
8 consenting to the transfer of securities subject to any  
9 condition imposed by the commissioner requiring the  
10 commissioner's consent to the transfer is twenty dollars  
11 (\$20) for each transfer.

12 (n) The filing fee for an amendment to an application  
13 filed after the effective date of the qualification of the sale  
14 of securities is fifty dollars (\$50) plus any additional fee  
15 that would have been required to be paid with the  
16 original application for qualification of the sale of  
17 securities under this section if the matters set forth in the  
18 amendment had been included in the original  
19 application.

20 (o) (1) The fee for filing an application for a  
21 broker-dealer certificate under Section 25211 is three  
22 hundred dollars (\$300).

23 (2) Each broker-dealer shall pay to the commissioner  
24 its pro rata share of all costs and expenses, reasonably  
25 incurred in the administration of the broker-dealer  
26 program under this division, as estimated by the  
27 commissioner for the ensuing year and any deficit  
28 actually incurred or anticipated in the administration of  
29 the program in the year in which the assessment is made.  
30 The pro rata share shall be the proportion that the  
31 broker-dealer and the number of its agents in this state  
32 bears to the aggregate number of broker-dealers and  
33 agents in this state as shown by records maintained by or  
34 on behalf of the commissioner. The pro rata share may  
35 include the costs of any examinations, audit, or  
36 investigation provided for in subdivision (r).

37 (3) On or before the 30th day of May in each year, the  
38 commissioner shall notify each broker-dealer by mail of  
39 the amount assessed and levied against it and that amount  
40 shall be paid within 20 days thereafter. If payment is not

1 made within 20 days, the commissioner shall assess and  
2 collect a penalty in addition to the assessment, of 1  
3 percent of the assessment for each month or part of a  
4 month that the payment is delayed or withheld.

5 (4) In the levying and collection of the assessment, a  
6 broker-dealer shall not be assessed for, nor be permitted  
7 to pay, less than seventy-five dollars (\$75) per year.

8 (5) In determining the amount assessed, the  
9 commissioner shall consider all appropriations from the  
10 State Corporations Fund for the support of the  
11 broker-dealer program under this division and all  
12 reimbursements applicable to the administration of the  
13 broker-dealer program under this division.

14 (6) If a broker-dealer fails to pay the assessment on or  
15 before the 30th day of June following the day upon which  
16 payment is due, the commissioner may by order  
17 summarily suspend or revoke the certificate issued to the  
18 broker-dealer. If, after that order is made, a request for  
19 hearing is filed in writing and a hearing is not held within  
20 60 days thereafter, the order is deemed rescinded as of its  
21 effective date. During any period when its certificate is  
22 revoked or suspended, a broker-dealer shall not conduct  
23 business pursuant to this division except as may be  
24 permitted by order of the commissioner; provided,  
25 however, that the revocation, suspension, or surrender of  
26 a certificate shall not affect the powers of the  
27 commissioner as provided under this division.

28 (p) The commissioner shall charge a fee of twenty-five  
29 dollars (\$25) for the filing of a notice or report required  
30 by rule adopted pursuant to subdivision (b) of Section  
31 25210 or subdivision (b) of Section 25230.

32 (q) The fee for filing an application for an investment  
33 adviser under Section 25231 is one hundred twenty-five  
34 dollars (\$125), and payment of this amount shall keep the  
35 certificate, if granted, in effect during the calendar year  
36 during which it is granted. Every investment adviser who  
37 has secured from the commissioner a certificate shall, in  
38 order to keep the certificate in effect for an additional  
39 period, pay a renewal fee of one hundred twenty-five

1 dollars (\$125) on or before the 15th day of December  
2 preceding the additional period.

3 (r) The fee for any examination, audit, or investigation  
4 is the amount of the salary or other compensation paid to  
5 the persons making the examination, audit, or  
6 investigation plus the amount of expenses including  
7 overhead reasonably incurred in the performance of the  
8 work. In determining the costs associated with an  
9 examination, audit, or investigation, the commissioner  
10 may use the estimated average hourly cost for all persons  
11 performing examinations, audits, or investigations for the  
12 fiscal year.

13 (s) The fee for any hearing held by the commissioner  
14 pursuant to Section 25142 shall be the sum determined by  
15 the commissioner to cover the actual expense of noticing  
16 and holding the hearing.

17 (t) The commissioner may fix by rule a reasonable  
18 charge for any publications issued under his or her  
19 authority. The charges shall not apply to reports of the  
20 commissioner in the ordinary course of distribution.

21 (u) The fee for filing an offer under subdivision (b) of  
22 Section 25507 shall be the amount of filing fee payable  
23 under subdivision (e), (f), (h), or (i) of this section if an  
24 application had been filed to qualify the transaction in  
25 which the securities upon which the offer is to be made  
26 were sold in violation of the qualification provisions of this  
27 law.

28 (v) The fee for filing an application for exemption  
29 pursuant to subdivision (l) of Section 25100 is two  
30 hundred fifty dollars (\$250).

31 (w) The commissioner may by rule require payment  
32 of a fee for filing a notice or report required by a rule  
33 adopted pursuant to Section 25105. The fee required in  
34 connection with a transaction as defined by that rule shall  
35 not exceed the fees specified in subdivision (c) based on  
36 the value of the securities sold, but the commissioner may  
37 permit a single notice for more than one transaction.

38 (x) The fee for filing the first notice of transaction  
39 under subdivision (n) of Section 25102 is six hundred  
40 dollars (\$600).



(y) The fee for filing a notice of transaction under subdivision (o) of Section 25102 shall be the fee for filing an application for qualification of the sale of securities by permit under paragraph (1) of subdivision (b) of Section 25113 as set forth in subdivision (e) of this section.

(z) The fee for filing a notice of transaction under subdivision (h) of Section 25103 shall be six hundred dollars (\$600).

~~SEC. 13.~~

*SEC. 30.* Section 25608.1 is added to the Corporations Code, to read:

25608.1. (a) The fee for an investment company filing a notice pursuant to subdivision (b) of Section 25100.1 is two thousand five hundred dollars (\$2,500).

(b) The fee for an issuer filing a notice pursuant to subdivision (a) of Section 25102.1 is six hundred dollars (\$600).

(c) The fee for an issuer filing a notice pursuant to subdivision (c) of Section 25102.1 is two thousand five hundred dollars (\$2,500).

(d) The fee for an issuer filing a notice pursuant to subdivision (d) of Section 25102.1 is three hundred dollars (\$300).

(e) The fee for an investment adviser filing a notice pursuant to subdivision (b) of Section 25230.1 is one hundred twenty-five dollars (\$125) and the fee for filing a notice or report required by rule adopted pursuant to subdivision (c) of Section 25230.1 is twenty-five dollars (\$25).

*SEC. 31. Section 25612.5 of the Corporations Code is amended to read:*

25612.5. (a) To encourage uniform interpretation and administration of this law and effective securities regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any

1 national or international organization or securities  
2 officials or agencies, and any governmental law  
3 enforcement or regulatory agency.

4 (b) The cooperation authorized by subdivision (a)  
5 includes, but is not limited to, the following actions:

6 (1) Prescribing rules and forms with a view to  
7 achieving maximum uniformity in the form and content  
8 of registration statements, applications, and reports  
9 wherever practicable.

10 (2) Participating in a nationwide central depository  
11 for qualification or registration of securities under this law  
12 and for documents or records required or allowed to be  
13 maintained under this law.

14 (c) Notwithstanding any other provision of law, any  
15 application for qualification, amendment to the  
16 application or related securities qualification or  
17 registration document *or notice under Sections 25100.1,*  
18 *25101.1, 25102.1, and 25230.1* or record otherwise required  
19 to be signed that is filed in this state by means of  
20 electronic technology pursuant to a nationwide central  
21 depository for qualification or registration of securities  
22 shall be deemed to be a valid original document upon  
23 reproduction to paper form by the Department of  
24 Corporations.

25 (d) “Electronic technology” includes, but is not  
26 limited to, computer modem, magnetic media or optical  
27 disk, but does not include a digital signature that does not  
28 meet the requirements of California law.

29 *SEC. 32. Section 25619 of the Corporations Code is*  
30 *amended to read:*

31 25619. (a) The commissioner may destroy any  
32 applications, *notices*, orders, permits, and revoked or  
33 surrendered certificates, together with the files and  
34 folders, as useless or obsolete, four years after the date of  
35 filing or issuance, with the approval of the Department  
36 of General Services; provided, that a permanent record  
37 shall be maintained of any disciplinary action taken by the  
38 commissioner.

39 (b) When acting as escrow holder for securities, the  
40 commissioner may destroy any certificates evidencing

1 securities of any corporation which has been dissolved or  
2 whose charter has been suspended for a period of not less  
3 than two years for nonpayment of taxes or penalties and  
4 may destroy any other records pertaining to the escrow  
5 of the securities destroyed, and he *or she* shall have no  
6 further liability or accountability therefor; provided, that  
7 the commissioner shall maintain a permanent record  
8 containing such information as he *or she* may by rule  
9 prescribe relating to the certificates and records so  
10 destroyed.

11 (c) Copies on microfilm or in other form which may be  
12 retained by the commissioner in his discretion of any  
13 records destroyed under this section shall be accepted for  
14 all purposes as equivalent to the original when certified  
15 by the commissioner.

16 *SEC. 33. Section 5.5 of this bill incorporates*  
17 *amendments to Section 25100 of the Corporations Code*  
18 *proposed by both this bill and SB 633. It shall only become*  
19 *operative if (1) both bills are enacted and become*  
20 *effective on or before January 1, 1998, (2) each bill*  
21 *amends Section 25100 of the Corporations Code, and (3)*  
22 *this bill is enacted after SB 633, in which case Section 5 of*  
23 *this bill shall not become operative.*